

AUG 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORMA AYALA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74187

Agency No. A095-301-910

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Norma Ayala, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss in part and deny in part the petition for review.

The evidence Ayala presented with her motion to reopen concerned the same basic hardship grounds previously considered by the agency. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See id.* at 600.

Ayala's contention that the BIA failed to sufficiently review the evidence Ayala presented with her motion fails because she has not overcome the presumption that the BIA reviewed the record. *See id.* at 603.

Ayala's contention that the BIA abused discretion by failing to provide specific and cogent reasons for concluding the evidence submitted was insufficient to warrant reopening is foreclosed by "our conclusion that we lack jurisdiction to review [Ayala's] claim regarding the BIA's determination that she did not make out a prima facie case of hardship." *Id.* at 604.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.